

Appendix B:
Organics Processing Contract between
the City of Seattle and

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ORGANICS PROCESSING CONTRACT
BETWEEN THE CITY OF SEATTLE
AND

THIS ORGANICS PROCESSING CONTRACT is entered into by and between **THE CITY OF SEATTLE**, a municipal corporation of the State of Washington acting by and through **Seattle Public Utilities**(“City”), and _____ (“Contractor”) to provide for processing of Organic Waste (as hereinafter defined) collected through the City’s residential, commercial and transfer station services and delivered to the Contractor’s processing facility.

The parties, in consideration of the promises, representations and warranties contained herein, agree as follows:

A. OVERVIEW

Section 10. Purpose and Intent

This Contract engages _____ to process Organic Waste into marketable products.

Section 15. Contract Term

This Contract is entered into as of this ____ day of _____, 2012. Actual Organic Material processing services will begin April 1, _____ and continue through March 31, _____

[The City, at its option, may extend this Contract for a two successive two-year periods to March 31, _____ or March 31, _____ by notifying the Contractor on or before June 30, _____ and June 30, _____ respectively. If the City extends this Contract, the same terms, conditions, and method of payment shall apply during the extension period.]

Section 20. Definitions

In addition to capitalized terms that are defined elsewhere, the following meanings apply:

“City” means the City of Seattle.

“City Approved Compostable Bags” means bags approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been approved by current or previous processor.

“City Approved Single-Use Food Service Ware” means single-use service ware and food service packaging approved by the City for collection in City services that meet ASTM D6400, ASTM D6868, or successor testing standards and have been approved by current or previous processor.

“Contaminants” means any materials outside the definition of Organic Waste that are commingled in processing loads.

“Food Waste” means all food scraps, including meat, dairy products, grease and bones; paper which has been contaminated with food, fat or grease; and soiled cardboard and paper including paper towels, paper plates, bags, tissue and waxed paper.

“Organic Waste” includes Food Waste, Yard Waste, Wood Waste, City Approved Compostable Bags, City Approved Single-Use Food Service Ware, and other organic materials as mutually agreed by the City and the Contractor.

“Yard Waste” means plant material (leaves, grass clippings, branches, brush, flowers, roots, wood waste, etc.); debris commonly thrown away in the course of maintaining yards and gardens, including sod and a small number of incidental rocks not over two (2) inches in diameter; and biodegradable waste approved for the Yard Waste programs by the City. Yard Waste does not include loose soils, Food Waste; plastics and synthetic fibers; lumber; any wood or tree limbs over four (4) inches in diameter; human or animal excrement; noxious weeds and soil contaminated with hazardous substances.

“Wood Waste” means unpainted and untreated pallets, lumber, lath and cedar shingles, and other clean wood delivered to the City transfer stations.

Section 30. City Responsibilities

The City shall be responsible for:

1. Making payments contemplated by this Contract;
2. Inspecting Contractor performance;
3. Maintaining its collection contracts;
4. Ensuring that Organic Waste collected under the City’s collection contracts or collected at City transfer stations is delivered to the Contractor’s processing facility; and
5. In accordance with Section 180, disposing of Contaminants delivered to Contractor's processing facility.
6. Coordinating and implementing customer education and enforcement efforts with City – contracted collectors to minimize contamination.
7. Monitoring loads of Organic Waste at City stations to minimize contamination.

Section 40. City Representations and Warranties.

The City represents and warrants to the Contractor as follows:

1. Organization and Qualification. The City is a municipal corporation and has all requisite corporate power and authority to enter into and to perform its obligations under this

Contract.

2. Authority.

- a) The City has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of the City under this Contract in accordance with its terms.
- b) This Contract has been validly executed and constitutes a valid and legally binding and enforceable obligation of the City.

Section 50. Contractor Responsibilities

The Contractor shall be responsible for:

- 1. Furnishing all skill, labor, equipment, materials, supplies and utility services required for providing all services in accordance with this Contract;
- 2. All actions and activities of its subcontractors;
- 3. Supplying all records and information required by this Contract;
- 4. Securing at Contractor's expense all governmental permits and licenses and required regulatory approvals (including those required by City ordinance);
- 5. Paying all applicable taxes;
- 6. Complying with all applicable laws and regulations, including without limitation relevant environmental and health laws, regulations and standards related to organics processing;
- 7. Performing all work in a timely, thorough and professional manner; and
- 8. All wage increases for Contractor's employees, any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other business risks that may affect the performance of this Contract.

Section 60. Contractor Representations and Warranties

The Contractor represents and warrants to the City as follows:

- 1. Organization and Qualification. The Contractor is duly incorporated, validly existing and in good standing under the laws of the State of Washington, and has all requisite corporate power and authority to enter into and to perform its obligations under this Contract.
- 2. Authority.

- a) The Contractor has the authority to execute this Contract, to make the representations and warranties set forth in it and to perform the obligations of Contractor under this Contract in accordance with its terms.
 - b) This Contract has been validly executed by an authorized representative of the Contractor and constitutes a valid and legally binding and enforceable obligation of Contractor.
3. Government Authorizations and Consents. The Contractor has or will obtain prior to the first date on which any materials will be processed under this Contract, such licenses, permits and other authorizations from federal, state and other governmental authorities, as are necessary for the performance of its obligations under this Contract.
4. Compliance With Laws. The Contractor is not in violation of any law, ordinance or regulation, the consequence of which violation will or may materially affect Contractor's ability to perform its obligations under this Contract. The Contractor is not subject to any order or judgment of any court, tribunal or governmental agency which materially and adversely affects its operations or assets in the state of Washington, or its ability to perform its obligations under this Contract.
5. Accuracy of Information. None of the representations or warranties in this Contract, and none of the documents, statements, certificates or schedules furnished or to be furnished by Contractor pursuant hereto or in connection with the performance of the obligations contemplated under this Contract, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements of fact contained therein not misleading.
6. Independent Examination. In accepting these responsibilities, the Contractor represents and affirms that it has made its own examination of all conditions, facilities and properties affecting the performance of this Contract and of the quantity and expense of labor, equipment, material needed, and of applicable taxes, permits, and laws.
7. Statements in Response to RFP Binding. The Contractor hereby agrees to be bound by all statements made in its Response to the Request for Proposals, including all answers to Proposal Questions and completed Forms

Section 70. Ownership of Equipment

All facilities, equipment, and property used in the performance of this Contract shall be wholly owned by the Contractor, provided, that leases, conditional sale contracts, mortgages, or other agreements for the use or financing the purchase of facilities, equipment, and property may be allowed with the prior written approval of the City. All such leases, conditional sale contracts, mortgages, or other agreements shall provide that in the event of the Contractor's failure to perform its obligations under this Contract, the City, at its option, shall have the right to take

possession of and operate facilities, equipment, and property covered by such lease or agreement for the unexpired term of this Contract. No further encumbrance shall be placed upon any such facilities, equipment, and property without the prior written approval of the City.

Section 80. Contractor's Office

The Contractor shall maintain an office with local telephone service, email, and such staff as needed to coordinate with City staff. Office hours shall be 8:00 a.m. to 5:00 p.m., Monday through Friday.

B. PROCESSING SERVICES

Section 100. Organic Waste Receiving and Processing

The Contractor shall be responsible for processing all Organic Waste delivered by the City and marketing all end products. The processing facility shall accept all of the Organic Waste collected from the City, or any City contractor, Monday through Friday, 7:00 am to 7:00 pm and Saturday and Sunday, 10:00 am to 4:00 pm, unless the City and Contractor agree to alternate arrangements. The receiving facility shall contain, maintain, and routinely certify a truck scale for weighing all trucks in and out of the facility. Tare weights shall not be used for billing the City.

The Contractor's arrangements for processing organic material, at both the primary and back-up processing facilities, shall be subject to review and approval before the start of this processing contract. All facilities covered under this contract shall be subject to inspection by City staff during business hours to determine compliance with this Contract and all of the local, state and regional air authority rules and regulations pertaining facility operations.

Section 120. Primary Organic Waste Receiving and Processing Facility

The Contractor's primary processing facility shall be its _____ facility located at _____.

Section 130. Back-up Organics Processing Facility

To avoid disruption of the organics collection program through a temporary shutdown in receiving or processing, the Contractor shall have an agreement with other permitted receiving and processing facilities for processing the organic materials accepted under this contract. The Contractor represents and warrants that as of the date hereof each of the following facilities is so permitted and that each has agreed to receive or process Organic Waste as a back-up facility pursuant to this Section 130:

(facility name and location)

If the Contractor is unable to meet pertinent local or state, local or other regulations, or is unable for any reason whatsoever to accept for processing at its specified primary processing facility, the Contractor, at its own initiative or upon notification from the City, shall direct the City to the back-up Organics receiving and/or processing facilities identified above.

The Contractor shall be responsible for all payments required to contract for use of the back-up facility. The City shall adjust Contractor payments for any changes to the Organics Waste transport costs as a result of delivery to a back-up facility. The City shall bill the Contractor for any additional City operational costs as a result of the City delivering Organics Waste to the back-up facility. The City will document these operational costs.

Section 140. Handling/Disposal of Contaminants

The City will be responsible for the disposal of Contaminants delivered to Contractor by the City or any City contractor. The Contractor will, without cost to the City, segregate the Contaminants (segregating tires separately) at the primary or back-up facilities, as the case may be, and will load the Contaminants into City trailers or containers. Upon notice from the Contractor, the City shall promptly accept and collect the Contaminants at the receiving facility and dispose of it. The cost of disposal and transport from the receiving facility shall be at the City's expense. The Contractor shall record and track the tons of Contaminants accepted by the City. . The maximum amount of contaminants for disposal by the City shall be based on Organic Waste composition studies conducted by the City approximately every four years. The contractor will provide adequate space and access at their receiving facility for the periodic waste composition studies.

Section 150. End Products

The Contractor will process Organic Wastes into marketable products such as soil amendments, mulch, animal feed product or gaseous and liquid byproducts from anaerobic digestion. The Contractor is responsible for transporting and marketing all end products. Marketing of the product is at the Contractor's risk, expense and profit (or loss). The contractor is responsible for marketing of any electrical energy or fuel produced from anaerobic digestion technologies.

Section 170. Testing Programs

The contractor will routinely test end products to ensure that they meet relevant regulatory standards.

The Contractor shall also maintain a testing program to verify that various consumer materials, including compostable bags and single-use food service ware and packaging are compostable at the Contractor's Processing Facility. The testing program will follow established and transparent protocol relevant to the technology at the Processing Facility. The Contractor shall initiate testing and related trials for individual consumer products within 30 days of requests from the City, a manufacturer, distributor or food service business. The Contractor shall notify the City and the applicant within 15 days of the completion of testing and shall maintain a website or web pages accessible to the public where all manufactured products approved compostable are listed and, when possible, pictured.

Upon request, the Contractor will provide adequate space at the Receiving or Processing Facility for occasional waste composition sorts by City staff or consultants.

Section 180. Disposal Prohibition.

The Contractor is prohibited from disposing of Organic Waste a which is delivered under this Contract as Garbage or marketing materials that the Contractor knows, or has reason to know, will be disposed in a landfill or incinerator or disposed of as Garbage. Violation of this Contract provision shall be cause for termination.

Section 190. Pilot Tests.

The City may require the Contractor to conduct pilot tests that temporarily change one or more provisions of this Contract. A pilot test is an experiment with a new processing method, and/or a different type of service. A pilot test may require additional record keeping. The City and the Contractor shall negotiate in good faith and sign a letter of agreement covering the expected cost and the pilot program duration prior to commencing any such test.

C. REPORTING REQUIREMENTS

Section 200. Scale and Trip Records

The Contractor shall provide to the City each week, in an electronic format specified by the City, a listing of the previous week's weight receipts for all materials received each day by the Contractor at the Processing Facility. Information include gross and net weights, truck number, route number, source, date, time entering and leaving, and other trip and load data. The Contractor shall keep as back-up a paper copy of each weight transaction. Weights must be obtained from certified private scales approved by the City, or other scales approved by the City. The City has the option of requiring any private scales to be certified as frequently as monthly.

Falsified or altered weight information shall be cause for Contract termination.

Section 210. Monthly and Quarterly Reports

The Contractor shall submit monthly reports for the length of the Contract period commencing with initiation of Organic Waste processing. These reports shall be due within ten working days after the end of the month. The Contractor shall not receive its monthly compensation until all items required in the report are submitted to the City. At a minimum, the reports shall include:

1. Summary of tonnages of all received material by source and type;
2. Contaminants summary and listing of individual weight receipts for Contaminants delivered to the City for disposal;
3. Summary of tonnages of all processed material sold, by type of product, grade of material, and buyer/destination; and

Contractor shall submit a quarterly report within fifteen (15) working days of the close of the quarter, which shall include:

1. Summary of monthly data for quarter and contract year to date;
2. Summary of end products sold;

3. Discussion of problems and noteworthy experience in program operation; and
4. Contractor recommendations for improvements.

D. COMPENSATION AND EMPLOYMENT WAGES AND RECORDS

Section 300. Payment for Processing Services

The City shall pay the Contractor monthly for all tons of Organic Waste delivered to the Contractor's receiving facility during the month documented per Sections 200 and 210. From April 1, ____ through March 31, _____ the City will pay the Contractor a rate of \$____ per ton.

Section 310. Adjustments in Subsequent Contract Years

The City will compute compensation payable for the second and subsequent Contract years as follows:

The **per ton rate from the preceding year** shall be multiplied by 1.0 plus **80%** of the percentage difference between the second-half annual consumer price index for Urban Wage Earners and Clerical Workers for the Seattle-Tacoma-Bremerton Area (CPI), Series ID No. CWURA423SAO, or successor indices and the previous year's CPI.

Section 320. Performance Adjustments

The Contractor shall pay the City \$1.00 per minute for every individual truck trip at the processing or tip facility that exceeds a Cycle Time of 15 minutes. The Contractor shall receive a credit from the City of \$1.00 per minute for every individual truck trip at the processing or tip facility that is less than a Cycle Time of 10 minutes.

Section 330. Payment Procedure

No later than the 10th of each month, the Contractor will submit an invoice and copies of weight information required pursuant to Sections 200 and 210. This invoice will be paid by the City to the Contractor by wire transfer on or before the 30th of the same month (or 20 calendar days after the invoice date, if the invoice/weight information is presented late).

Section 340. Wage Increases for Employees

All wage increases for employees of the Contractor granted during the term of this Contract shall be the sole responsibility of the Contractor. Any benefits or added costs resulting from changes in technology, laws and regulations, labor practices, availability of equipment, and other foreseeable business risks that may affect the performance of this Contract shall be to the Contractor's advantage or expense respectively, except as may be noted herein.

Section 370. Withholding and Payment of Tax Liens and Judgments

The City may withhold and pay to the United States of America or to any federal court, or the State of Washington or any state court, the amount claimed in a levy filed by the United States Internal Revenue Service or the Washington State Department of Revenue, respectively; the amount directed by a writ of garnishment, writ of attachment, or writ of execution; or by an order of a Bankruptcy Court, and/or by any court order, each for monies claimed from the Contractor.

When presented such an order, the City may in its discretion institute interpleader proceedings. The City may make a payment in conjunction with the interpleader action to the appropriate court. Payments so made or deposited into the registry of the court shall be satisfaction of payment due to the Contractor.

Section 380. Withholding and Payment to Workers

If any worker doing recycling processing work for the Contractor (or any subcontractor) shall be paid by a postdated check, a check presented and dishonored for insufficient funds on account, or other negotiable instrument or promissory note that is not payable on the worker's regular payroll date or paid when presented, the worker may present the unpaid document to the City and request payment directly from the City. The City shall contact the Contractor, and if payment is not made within twenty-four hours, the City may issue a warrant drawn on the City for the amount of the unpaid wages and the City shall deduct the amount paid, together with a service charge of Thirty Dollars (\$30.00) per warrant from the next succeeding payment to be made to the Contractor.

Section 390. Workers Right to Know

"Right to Know" legislation required the Department of Labor and Industries to establish a program to make employers and employees more aware of the hazardous substances in their work environment. WAC 296-800-108 requires among other things that all manufacturers/distributors of hazardous substances, including any of the items listed on this ITB, RFP or contract bid and subsequent award, must include with each delivery completed Material Safety Data Sheets (MSDS) for each hazardous material. Additionally, each container of hazardous material must be appropriately labeled with: the identity of the hazardous material, appropriate hazardous warnings, and the Name and Address of the chemical manufacturer, importer, or other responsible party. Labor and Industries may levy appropriate fines against employers for noncompliance and agencies may withhold payment pending receipt of a legible copy of the MSDS. OSHA Form 20 is not acceptable in lieu of this requirement unless it is modified to include appropriate information relative to "carcinogenic ingredients: and "routes of entry" of the product(s) in question.

E. AFFIRMATIVE EFFORTS AND NON-DISCRIMINATION

Section 400. Employment Actions

Contractor shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment

advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training.

Section 410. Affirmative Effort Implementation

In accordance with Seattle Municipal Code Chapter 20.42, Contractor shall actively solicit the employment and subcontracting of women and minority group members when there are commercially useful purposes for fulfilling the scope of work.

In the event Subcontracting is considered appropriate and feasible to contract performance, the Contractor shall develop a Subcontracting Plan, which also may be referred to as an Outreach Plan. The Subcontracting (Outreach) Plan shall specify the Contractor's affirmative efforts and an agreement to the City for subcontracting to women and minority businesses, and/or diverse employment. The Subcontracting (Outreach) Plan, as submitted and/or as agreed upon with the City thereafter, shall be incorporated as a material part of the Contract. In preparing the Subcontracting (Outreach) Plan, Contractors shall actively solicit qualified, available and capable women and minority-owned businesses to perform the subcontracting work for the contract. The Contractor shall submit the Subcontracting (Outreach) Plan to the City with the solicitation and/or prior to contract execution. At the request of the City, Contractor shall promptly furnish evidence of the Contractor's compliance with these requirements, which may include a list of all subcontractors and/or WMBE subcontractors, and may include a request for copies of the executed agreements between the Contractor and subcontractors, invoices and/or performance reports.

Section 420. Investigation of Employment and Affirmative Efforts

If upon investigation, the Director of Finance and Administrative Services finds probable cause to believe that the Contractor has failed to comply with the requirements of this Section, the Contractor shall notified in writing. The Director of Finance and Administrative Services shall give Contractor an opportunity to be heard, after ten calendar days' notice. If, after the Contractor's opportunity to be heard, the Director of Finance and Administrative Services still finds probable cause, s/he may suspend the Contract and/or withhold any funds due or to become due to the Contractor, pending compliance by the Contractor with the requirements of this Section.

Any violation of the mandatory requirements of this Section, or a violation of Seattle Municipal Code Chapter 14.04 (Fair Employment Practices), Chapter 14.10 (Fair Contracting Practices), Chapter 20.45 (City Contracts – Non-Discrimination in Benefits), or other local, state, or federal non-discrimination laws, shall be a material of contract for which the Contractor may be subject to damages and sanctions provided for by the Contractor Contract and by applicable law. In the event the Contractor is in violation of this Section shall be subject to debarment from City contracting activities in accordance with Seattle Municipal Code Section 20.70 (Debarment).

Section 430. Assignment and Subcontracting

Contractor shall not assign or subcontract any of its obligations under this Contract without Seattle's written consent, which may be granted or withheld in Seattle's sole discretion. Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract except Equal Benefit provisions. Contractor shall ensure that all subcontractors comply with the

obligations and requirements of the subcontract, except for Equal Benefit provisions. Seattle's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract.

Section 440. Key Persons and Subcontractors

Contractor shall not transfer, reassign or replace any individual or subcontractor that is determined to be essential or that has been agreed upon in the Contractor's Subcontracting (Outreach) Plan, without express written consent of Seattle. If during the term of this Contract, any such individual leaves the Contractor's employment or any named subcontract is terminated for any reason, Contractor shall notify Seattle and seek approval for reassignment or replacement with an alternative individual or subcontractor. Upon Seattle's request, the Contractor shall present to Seattle, one or more subcontractors or individual(s) with greater or equal qualifications as a replacement. Continued achievement of the Subcontracting (Outreach) Plan that was incorporated into this Contract by reference, if any, and the associated subcontract awards, aspirational goals and efforts, will be one of the considerations in approval of such changes. Seattle's approval or disapproval shall not be construed to release the Contractor from its obligations under this Contract.

Section 460. Equal Benefits

The Contractor shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Contractor is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Contractor provides to its employees with spouses. At Seattle's request, the Contractor shall provide complete information and verification of the Contractor's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at <http://cityofseattle.net/contract/equalbenefits/>.)

Any violation of this section shall be a material breach of Contract for which the City may:

1. Require the Contractor to pay actual damages for each day that the Contractor is in violation of SMC Ch. 20.45 during the term of the Contract; or
2. Terminate the Contract; or
3. Disqualify the Contractor from bidding on or being awarded a City contract for a period of up to five (5) years; or
4. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated there under.

F. Federal Provisions

Section 500. Equal Employment Opportunity

All Contractors must comply with federal Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR

part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

Section 510. Civil Rights Act Title VI

The Contractor must comply with the provisions of the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). The law provides that no person in the United States shall, on the grounds of race, color or national origin, be denied the benefits of, be excluded from participation in, or be subjected to, discrimination under any program or activity receiving federal financial assistance.

Section 520. Americans with Disabilities Act

The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.

Section 530. OSHA/WISHA

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Acts of 1970 (OSHA), as may be amended, and, if it has a workplace within the State of Washington, the Washington Industrial Safety and Health Act of 1973 (WISHA), as may be amended, and the standards and regulations issued thereunder and certifies that all items furnished and purchased under this order will conform to and comply with said standards and regulations. Contractor further agrees to indemnify and hold harmless purchaser from all damages assessed against purchaser as a result of Contractor's failure to comply with the acts and standards thereunder and for the failure of the items furnished under this order to so comply.

Section 540. Contract Work Hours and Safety Standards

For all contracts that employ mechanics or laborers, the Contractor and all subs shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provide that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Section 560. Beck Notice

Notification of Employee Rights Concerning Payment of Union Dues or Fees (Executive Order 13201) shall apply to all contracts above \$100,000.

Section 570. Clean Air Act and Federal Water Pollution Control Act

All Contractors and subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the City immediately and to the Regional Office of the Environmental Protection Agency (EPA).

Section 580. Energy Efficiency

All contractors and subcontractors must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

G. SECURITY; LIABILITY; DAMAGES

Section 600. Performance Bond

The Contractor shall provide and maintain at all times a valid, irrevocable Contractor's Performance and Payment Bond ("Bond") for One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). The Bond shall be issued for the Contract term. The Contractor shall be named as Principal and The City of Seattle shall be named as Obligee.

The Bond must be in place prior to the beginning of processing under this Contract.

The Bond shall be conditioned upon full performance of all obligations imposed upon the Contractor in this Contract. The Bond shall be subject to approval by the City Attorney as to the company, form, and sufficiency of surety. If the instrument is found by the City Attorney to be flawed, the Contractor must correct the flaw promptly prior to contract execution or the award may be terminated.

The Bond must be executed by a company that is included in the U. S. Department of the Treasury's Listing of Approved Sureties (Circular 570), is included on the Washington State Insurance Commissioner's Authorized Insurance Company List, and is acceptable to the City.

The Bond shall be in full force effect and shall be the obligation of the surety unless the Contractor shall faithfully perform all of the provisions of this Contract and pay all laborers, mechanics, subcontractors, material men and all persons who shall supply such Contractor or subcontractors with provisions and supplies for the performance of this Contract. The Bond shall contain appropriate recitations that it is issued pursuant to this Section of this Contract, that it shall be construed to meet all requirements specified herein and that any condition or limitation in the Bond which is in conflict with the conditions and requirements of this Section is void.

Failure of the Contractor to furnish and maintain the Bond shall be considered a material breach of this Contract and grounds for its immediate termination at the option of the City.

Section 610. Default of Contractor

This Section is independent, notwithstanding any other provisions of this Contract. Except as provided in the last paragraph of this Section 610, the Contractor may be held in default of the Contract in the event that the Contractor:

1. Is unable to accept, for more than a 48 hour period for processing at the primary or back-up Processing Facility;
2. Fails to comply with the terms of any of the Sections in Chapter E (Section 400 – Section 460);
3. Fails to furnish and maintain a Performance and Payment Bond per Section 600;
4. Fails to furnish and maintain the Insurance Requirements per Section 620; or
5. Repeatedly neglects, fails, or refuses to comply with any material term of the Contract, after having received notice of its obligation to do so.

To initiate proceedings under this Section, the City shall give notice to the Contractor and its surety of the location, time, and date within the following seven calendar days of a meeting with the Director at which the Contractor may show cause why it should not be declared in default or why it should be given the opportunity to cure said default. In the event the Contractor fails to show, to the reasonable satisfaction of the Director, why the Contractor should not be declared to be in default of this Contract, the Director may make a declaration of default. In evaluating whether to make such a declaration of default, the Director shall, in his/her discretion, consider the severity of the alleged violations, and the overall performance of the Contractor under the Contract.

In declaring the Contractor to have defaulted on the Contract, the Director also may order the Contractor to discontinue further performance of work under the Contract, transfer the obligation to perform such work from the Contractor to the surety on the Contractor's Performance and Payment Bond, and take any other action the Director deems advisable.

Upon receipt of a notice that the work has been transferred to the surety without termination of the Contract, the surety shall take possession of all materials and equipment hereof, for the purpose of completing the work under the Contract; employ, by contract or otherwise, any person and all persons needed to perform the work; and provide materials and equipment required therefor. Such employment shall not relieve the surety of its obligations under the Contract and the Bond. If there is a transfer to the surety, payments shall be made to the surety or its agent for all work performed under the Contract subsequent to such transfer, in amounts equal to those that would have been made to the Contractor had it performed in the manner and to the extent of the surety's performance, and the Contractor shall have no claim upon the same.

In the event the surety on the Contractor's Bond fails to assume or continue performances within 48 hours after its receipt of notice that the work has been transferred to such surety, the Contractor shall lease, sublease or otherwise license the City to use all, or whatever portion is

desired by the City, the materials and equipment necessary for processing purposes for a period of up to six months following the date of the declaration of default by the City, without requiring the City to execute any other document whatsoever to accomplish such lease, sublease, or license and without requiring the City to post any bond, pledge, deposit or other security for such equipment and materials, but upon the condition that the City pay for the equipment and materials actually used for such processing a market rental that is no greater than (i) the monthly lease, in the event such property is leased by the Contractor, (ii) the periodic installment, in the event such property is being acquired under a purchase contract, (iii) the periodic financing interest and principal, in the event such property is being acquired under a purchase contract, or (iv) the periodic interest and principal, in the event such property is being acquired under a financing arrangement; provided, that under no circumstances shall the City be liable during its use of such property for any arrearages, balloon payment, accrued interest, accelerated charges in the event of a default, or other extraordinary payment; nor shall the satisfaction thereof be a condition of the City's interim use of such property; provided, further, that such lease, sub-lease, or license shall be suspended the date the surety on the Contractor's bond or its agent accepts the transfer of work under the Contract.

In the event the City secures the performance of work under the Contract at a lesser cost than would have been payable to the Contractor had the Contractor performed the same, then the City shall retain such difference; but in the event such cost to the City is greater, the Contractor and its surety shall be liable for and pay the amount of such excess to the City.

All payments due the Contractor at the time of default, less amounts due the City from the Contractor, shall be applied by the City against damages suffered and expense incurred by the City by reason of such default, any excess shall be paid to the Contractor unless otherwise provided herein.

Notwithstanding the provisions of this Section, a delay or interruption in the performance of all or any part of the Contract resulting from causes beyond the Contractor's control shall not be deemed to be a default and the rights and remedies of the City provided for herein shall be inapplicable; provided that labor disputes involving Contractor's employees shall not be considered a cause beyond the Contractor's control.

Section 620. Insurance

At all times during the term of this Agreement, the Contractor shall maintain in force the following minimum levels of coverage for insurance or self-insurance ("Insurance"):

1. COVERAGES AND LIMITS

The Insurance shall provide the minimum coverages and limits of liability set forth below.

- a) **COMMERCIAL GENERAL LIABILITY (CGL)** Insurance including coverage for:
 - i. Premises/Operations
 - ii. Products/Completed Operations
 - iii. Personal/Advertising Injury
 - iv. Contractual
 - v. Independent Contractors

vi. Stop Gap/Employers Liability

Such Insurance must provide the following minimum limits of liability:

\$ 5,000,000	each occurrence Combined Single Limit bodily injury and property damage (CSL)
\$10,000,000	general aggregate
\$ 1,000,000	each Offense Personal/Advertising Injury,
\$ 5,000,000	each accident/disease/policy limit

The limits of liability specified above may be satisfied with primary limits of liability or any combination of primary limits and excess/umbrella limits.

- b) AUTOMOBILE LIABILITY INSURANCE for owned, non-owned, hired, and leased vehicles, as applicable, with MCS 90 and CA 99 48 endorsements if pollutants are to be transported. Such insurance must provide a minimum limit of liability of \$1,000,000 CSL.
- c) WORKERS' COMPENSATION INSURANCE as required by the Industrial Insurance laws of the state of Washington.

2. GENERAL REQUIREMENTS

- a) Each insurer must either be (1) authorized to do business in the state of Washington and maintain A.M. Best's ratings of A-: VII or higher, or (2) procured as surplus lines under the provisions of chapter 48.15 RCW ("Unauthorized Insurers"). The City reserves the right to reject insurance including based on the insurer, terms and coverage, the certification of insurance, and/or policy provisions.
- b) The Contractor shall keep this Insurance in force during the term of the contract
- c) The liability Insurance policies for which there is a requirement to include the City as an additional insured shall contain a "cross liability" provision.
- d) The Contractor and any subcontractor insurance liability Insurance coverage required to include the City as an additional insured shall be primary and non-contributory as respects the City's self-insurance and/or insurance.
- e) All Insurance shall include a requirement providing for a minimum of thirty (30) days prior written notice to the Contracting Agency of any cancellation in any Insurance, except a minimum of ten (10) days as respects cancellation for non-payment.
- f) In the event that the City tenders a claim to any Contractor insurer for defense and indemnity, and the insurer declines to accept the tender or accepts it under a reservation

of rights, upon the City's request the Contractor shall forward to the City a true and certified copy of any relevant Insurance policy(ies).

- g) The Contractor shall not begin work under the contract until the required Insurance has been obtained and approved by the City.
- h) Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such Insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Contracting Agency on demand, or at the sole discretion of the Contracting Agency, offset against funds due the Contractor from the Contracting Agency.
- i) Any self-insured retention (S.I.R.) in excess of \$50,000 must be disclosed and is subject to City's approval. The Contractor shall furnish financial information that the City shall reasonably require for performing a risk retention analysis and shall, in addition, provide a written statement that the Contractor will protect the City against any claim within the S.I.R. to the same extent that coverage would be afforded under the relevant excess of loss commercial insurance policy. The cost of any claims payments for defense and indemnity falling within the S.I.R. shall be the responsibility of the Contractor.
- j) All costs for Insurance shall be incidental to and included in the unit or lump sum prices of the contract and no additional payment will be made.

3. NO LIMITATION OF LIABILITY; ADDITIONAL INSURED

The limits of liability specified herein are minimum limits only. Such minimum limits of liability requirements shall not be construed to limit the liability of the Contractor, any subcontractor of any tier or of any of their respective insurers. Any provision in any Contractor or subcontractor Insurance policy that limits available limits of liability to those specified in a written agreement or contract shall not apply and all Insurance policies, with the exception of Workers Compensation Insurance, shall include the City of Seattle as an additional insured for primary and non-contributory limits of liability for the full valid and collectible limits of liability maintained by the Contractor, whether primary, excess, contingent or otherwise. This provision shall apply regardless of whether such limits maintained by the Contractor are greater than those required by this Contract, and regardless whether the certification of Insurance provided by a subcontractor of any tier pursuant to 4) below specifies lower minimum limits than those specified for or maintained by the Contractor.

4. SUBCONTRACTORS

Contractor shall contractually require that each subcontractor, providing work or services in support of this Contract, of every tier maintain at a minimum the Insurance coverages

specified in paragraph 1) a) and b). Upon request of the City, the Contractor shall cause evidence of such Insurance to be provided.

5. EVIDENCE OF INSURANCE (DOES NOT APPLY TO STATE OF WASHINGTON STATUTORY WORKERS' COMPENSATION)

The Contractor shall deliver to the City certification of Insurance meeting the requirements set forth herein when the Contractor delivers the signed Contract for the work. The certification of Insurance must include the following:

- a) An ACORD certificate or equivalent form fully disclosing all coverages and limits of liability maintained.
- b) A copy of the additional insured endorsement or blanket additional insured language to the Commercial General Liability Insurance documenting that the City of Seattle is an additional insured for primary and non-contributory limits off liability. A statement of additional insured status on an ACORD or other form of certificate of Insurance will not satisfy this requirement.
- c) Any other amendatory endorsements to document compliance with the requirements herein.

Section 630. Indemnity

To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit, except for damages resulting from the sole negligence of the City. As to the City of Seattle, the Contractor waives any immunity it may have under RCW Title 51 or any other Worker's Compensation statute. The parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

Section 650. Liquidated Damages

This Section is independent of Section 610. Liquidated Damages pursuant to this Section shall be deducted from the monthly payment to the Contractor. The acts or omissions in the left hand column are a breach of this Contract; the amounts in the right hand column are set as Liquidated Damages.

Failure to accept, for more than a 3-hour period during the hours described in Section 100, Organic Waste at the primary or back-up Receiving or Processing Facility. These damages do not apply in the event that a major disaster or emergency	\$500 per inbound truck per hour
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causes a disruption in the facility operations.

H. PROPRIETARY AND CONFIDENTIAL INFORMATION

Section 700. No disclosure unless required by law

The parties agree that they will not permit the duplication or disclosure of any information designated in advance by the other party as "Confidential and Proprietary" to any person (other than its own employee, agent, or representative who must have such information for the performance of that party's obligations hereunder) unless such duplication, use or disclosure is specifically authorized in writing by the other party or is required by law. "Confidential and Proprietary" information does not include ideas, concepts, know-how, or techniques related to information that, at the time of disclosure, is in the public domain unless the entry of that information into the public domain is a result of any breach of this Contract. Likewise, "Confidential and Proprietary" information does not apply to information that is independently developed, already possessed without obligation of confidentiality, or rightfully obtained from a third party without an obligation of confidentiality.

Section 710. Contractor's Understanding and Obligations

Contractor understands that any records (including but not limited to bid or proposal submittals, the Agreement, and any other contract materials) it submits to the City, or that are used by the City even if the Contractor possesses the records, are public records under Washington State law, RCW Chapter 42.56. Public records must be promptly disclosed upon request unless a statute exempts them from disclosure. The Contractor also understands that even if part of a record is exempt from disclosure, the rest of that record generally must be disclosed.

If the City receives a public disclosure request made pursuant to RCW 42.56, the City will not assert an exemption from disclosure on behalf of the Contractor. For materials that the Contractor has properly marked, the City may notify the Contractor of the request and postpone disclosure for ten business days to allow the Contractor to file a lawsuit seeking an injunction preventing the release of documents pursuant to RCW 42.56.540. Any notification is provided as a courtesy and is not an obligation on behalf of the City. Unless the Contractor obtains and serves an injunction upon the City before the close of business on the tenth business day after the date of the notification, the City may release the documents. It is the Contractor's discretionary decision whether to file the lawsuit.

In order to request that material not be disclosed until receipt of notification of a public disclosure request, you must identify the specific materials and citations very clearly on the City Contractor Questionnaire that you believe are exempt from disclosure. The City will not withhold material for notification if the Contractor simply marked confidential on the document header, footer, stamped on all pages, or offered a generic statement that the entire document is protected. Only material specifically listed and properly cited on the Contractor Questionnaire will be temporarily withheld until the City provides notification of a public disclosure request.

If the Contractor does not obtain and serve an injunction upon the City within 10 business days of the date of the City's notification of the request, the Contractor is deemed to have authorized releasing the record.

If the Contractor does not submit a request within the Contractor Questionnaire, the Contractor is deemed to have authorized releasing any and all information submitted to the City.

Notwithstanding the above, the Contractor must not take any action that would affect (a) the City's ability to use goods and services provided under this Agreement or (b) the Contractor's obligations under this Agreement.

The Contractor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

Section 720. The City's Obligations

The City will disclose those parts of records the Contractor has marked as "proprietary information" only to authorized persons unless: (a) the City discloses the records in response to a public disclosure request or (b) the Contractor has given the City express advance written permission to disclose the records. "Authorized persons," means those City officers, employees, contractors and consultants for whom the proprietary information is necessary to perform their duties or obligations to the City. The term "proprietary information" does not include ideas, concepts, know-how, or techniques related to any information that, at the time of disclosure, is in the public domain, unless the entry of that information into the public domain is a result of a breach of this Contract.

If the City receives a public disclosure request for records that Contractor has marked as "proprietary information," the City may promptly notify the Contractor of the request. The City may postpone disclosing these records for ten business days after it has sent notification to the Contractor, in order to allow the Contractor to file a lawsuit under RCW 42.56.540 to enjoin disclosure. It is the Contractor's discretionary decision whether to file the lawsuit.

If the City has notified the Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City may disclose the record.

The City has no other obligations concerning records the Contractor has marked as "proprietary information" under this Contract. The City has no obligation to claim any exemption from disclosure. The City is not obligated or liable to the Contractor for any records that the City releases in compliance with this Section or in compliance with the order of a court of competent jurisdiction.

I. ANCILLARY PROVISIONS

Section 800. Assignment or Pledge of Moneys by the Contractor

The Contractor shall not assign or pledge any of the monies due under this Contract without securing the written approval of the surety on the performance bond and providing at least thirty (30) calendar days' prior notice to the City of such assignments or pledge together with a copy of the surety's approval thereof. Such assignment or pledge, however, shall not release the Contractor or its sureties from any obligations or liabilities arising under or because of this Contract.

Section 810. Assignment; Subcontracting; Delegation of Duties

The Contractor shall not assign or subcontract or transfer any of the work or delegate any of its duties under the Contract except as expressly permitted by this Contract without the prior written approval of the City which approval may be granted or withheld in the City's sole discretion.

Any subcontract made by Contractor shall incorporate by reference all the terms of this Contract except for Equal Benefit provisions (Sections 460 and 465). Contractor shall ensure that all subcontractors comply with the obligations and requirements of the subcontract, except for Equal Benefit provisions (Sections 460 and 465).

The City's consent to any assignment or subcontract shall not release the Contractor from liability under this Contract, or from any obligation to be performed under this Contract, whether occurring before or after such consent, assignment, or subcontract. In the event of an assignment, subcontract, or delegation of duties, the Contractor shall remain responsible for the full and faithful performance of this Contract and the assignee, subcontractor, other obligor shall also become responsible to the City for the satisfactory performance of the work assumed. The City may condition its approval upon the delivery by the assignee, subcontractor or other obligor of its covenant to the City to fully and faithfully complete the work or responsibility undertaken.

Section 820. Audit

Upon request, Contractor shall permit the City or its designee to inspect and audit all pertinent books and records of Contractor, any subcontractor, or any other person or entity that performed work in connection with or related to the Contract, at any and all times deemed necessary by the City, including up to six years after the final payment or release of withheld amounts has been made under this Contract. Such inspection and audit shall occur in King County, Washington or other such reasonable location as the City selects. The Contractor shall supply the City with, or shall permit the City to make, a copy of any books and records and any portion thereof. The Contractor shall ensure that such inspection, audit and copying right of the City is a condition of any subcontract, agreement or other arrangement under which any other person or entity is permitted to perform work under this Contract.

Section 835. Compliance with Law

The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The City of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

Section 840. Licenses and Similar Authorizations

The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

Section 845. Taxes

The Contractor shall pay, before delinquency, all taxes, import duties, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.

Section 860. Disputes

Seattle and Contractor shall maintain business continuity to the extent practical while pursuing disputes. Any dispute or misunderstanding that may arise under this Contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and Seattle's Contract Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

Notwithstanding above, if Seattle believes in good faith that some portion of work has not been completed satisfactorily, Seattle may require Contractor to correct such work prior to Seattle payment. In such event, Seattle must clearly and reasonably provide to Contractor an explanation of the concern and the remedy that Seattle expects. Seattle may withhold from any payment that is otherwise due, an amount that Seattle in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, Seattle may retain the amount equal to the cost to Seattle for otherwise correcting or remedying the work not properly completed.

Section 870. Contract Rights

The parties reserve the right to amend this Contract from time to time by mutual agreement in writing. Rights under this Contract are cumulative, and in addition to rights existing at common law. Payment by the City and performance by the Contractor do not waive their contract rights.

Failure by either party on any occasion to exercise a contract right shall not forfeit or waive the right to exercise the right on another occasion. The use of one remedy does not exclude or waive the right to use another.

Section 875. Interpretation

This Contract shall be interpreted as a whole and to carry out its purposes. This Contract is an integrated document and contains all the promises of the parties; no earlier oral understandings modify its provisions.

Captions are for convenient reference only. A caption does not limit the scope or add commentary to the text.

Section 880. Law; Venue

The laws of the State of Washington and Charter and Ordinances of the City shall govern the validity, construction, and effect of this Contract. The venue for any claims, litigation, or causes of action between the parties shall be in the Superior Court of the State of Washington for King County.

Section 885. Notices

All official notices or approvals shall be in writing.

To the City:

Hans Van Dusen
Seattle Public Utilities
700 Fifth Avenue, 49th floor
P.O. Box 34018
Seattle, Washington 98124-4018
Phone: (206) 684-4657
Fax: (206) 386-0096

To the Contractor:

Either party may from time to time designate a new address for notices. Unless a return receipt or other document establishes otherwise, a notice sent by U.S. Mail shall be presumed to be received the second business day after its mailing.

Section 890. Severability

Should any term, provision, condition, or other portion of this Contract or its application be held to be inoperative, invalid, or unenforceable, the remainder of this Contract or its application in other circumstances shall not be affected thereby and shall continue in force and effect.

Section 895. Termination

Notwithstanding any other provisions of this Contract, the City may terminate this Contract upon a material default under or breach of this Contract by the Contractor. A termination for violation of an equal opportunity provision, or violation of any other provision shall take effect in fifteen (15) days after delivery of notice of termination.

IN WITNESS WHEREOF, the parties hereto have executed this Contract by having their representatives affix their signatures below.

THE CITY OF SEATTLE

By _____

Signature

Type or Print Name

Title

Date

By _____

Ray Hoffman, Director
Seattle Public Utilities

Date

Authorized by Ordinance Number _____